

SPECIAL CIVIL APPLICATION No 3064 of 1998

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

2. To be referred to the Reporter or not? No

5. Whether it is to be circulated to the Civil Judge?
No

STATE OF GUJARAT

Ms. S.D. TALATI, Ld. APP for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 04/11/98

ORAL JUDGEMENT

1. This Habeas Corpus petition under Article 226 of the constitution of India, has been moved for releasing the petitioner from illegal detention in pursuance of order dated 12-2-1998 passed by the Detaining Authority. It appears from the petition that the Detaining Authority in exercise of powers under Section 3 [1] of the Gujarat Prevention of Anti-social Activities Act [for short PASA Act.], passed an order of detention of the petitioner, while the petitioner was in judicial custody. The petitioner was arrested on 11-2-1998 in connection with Criminal Case registered vide C.R. NO. 3016 of 1998 under Section 294[B], 506[1] and 323 of the Indian Penal Code. The impugned order of detention was passed on 12-2-1998 i.e. a day after arrest of the petitioner. The detention order has been challenged on numerous grounds.

2. Having heard the learned advocates for the parties, I find that on two grounds, the detention order cannot be sustained and is liable to be quashed.

3. The first ground is that there is a specific allegation in ground [J] of the Writ Petition that the petitioner has made representation on 4-4-1998 to the Home Minister of Gujarat by Registered Post and that he has not received any intimation from the State Government [Home Minister of Gujarat] as to the fate of his representation. Strangely enough a vague affidavit has been filed by the Commissioner of Police, Ahmedabad, in which he has chosen to remain silent on this point. The fact, therefore, emerges from the petition is that the petitioner has not been informed about the order passed by the State Government, on his representation dtd. 4-4-1998. In such state of affairs, detention of the detenu - petitioner becomes illegal and requires to be set aside.

4. The other ground for setting aside the detention order against the petitioner is that it suffers from vice of non-applicability of mind. As stated above, the petitioner was arrested in connection with Criminal Case on 11-2-1998. The detention order was passed on 12-2-1998. It is specifically stated in para (n) of the Writ Petition that no bail application was filed by the

petitioner. The detention order shows that the detaining authority entertained an apprehension, which was totally unfounded, that in case the detenu is released on bail in the said case crime, he will again indulge in similar activities. No doubt, in the counter affidavit, there is a mention of two other criminal cases, against the petitioner, but they are also of minor nature and no serious offence was complained of. If the petitioner did not apply for bail there was no apprehension that he could be released on bail. The Apex Court, in the case of Abdul Razak Abdul Wahab Shaikh Vs. S.N. Sinha, reported in AIR 1989 S.C. 2265, observed that non-awareness of the detaining authority of the fact that no bail application was made on behalf of the detenu for his release before the designated court and as such the possibility of his coming out on bail is non-existent clearly establishes that the subjective satisfaction was not arrived at by the detaining authority on consideration of relevant material. The facts of the case of Abdul Razak Abdul Wahab Shaikh [Supra], were that the detenu was in judicial custody in connection with a Criminal Case and order of detention was served on him in jail. The detenu pressed for bail which was rejected by the designated court. It was undisputed in that case that thereafter no bail application was moved for release to the detenu, before the detention order was served on him. On these facts, the Apex Court held that detention order was bad in law and was consequently quashed. The facts in the case under consideration before me, are on a stronger footing inasmuch as, here no bail application was at all moved by the petitioner and nonawareness of the detaining authority of this fact clearly exposes nonapplication of mind by the detaining authority. The impugned order of detention, therefore, cannot be sustained and is liable to be quashed.

The petition is hereby allowed.

The impugned order of detention dtd. 12-2-1998
annexure [A], to the Writ Petition is hereby quashed.

The petitioner shall be released forthwith if he
is not required in connection with any other Criminal
Case.

sd/-

Date : 4-11-1998. [D.C. Srivastava, J]

Rafik*